

APPEAL NO. 021563  
FILED AUGUST 9, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 14, 2002. The hearing officer determined that the appellant (claimant herein) was not entitled to supplemental income benefits (SIBs) for the first, second, and third quarters. The claimant appeals, contending that the hearing officer erred in admitting a functional capacity evaluation (FCE) performed prior to the qualifying periods for the SIBs quarters in dispute; that the hearing officer erred in finding that the claimant was able to work; and that the hearing officer exhibited bias at the hearing. The respondent (carrier herein) argues that the decision of the hearing officer should be affirmed.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The hearing officer did not err in determining that the claimant is not entitled to first, second, or third quarter SIBs. The claimant asserted at the CCH that she had no ability to work during the qualifying periods for these quarters. Whether the claimant had an ability to work and made a good faith effort to seek employment commensurate with that ability were questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). This is so even though, another fact finder might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

As far as the claimant's contention of error concerning the FCE, we have held that the hearing officer may admit and weigh medical evidence concerning a claimant's ability to work even if such records cover periods outside the qualifying periods. Certainly, the age of the record is a factor the hearing officer should consider in determining what weight to give it. It is still the function of the hearing officer as the fact finder to determine what weight to assign to the record. In any case, even assuming any error in the admission of the FCE, such error would be harmless in light of the finding of the hearing officer that the claimant failed to provide a narrative showing the claimant was unable to work during the relevant qualifying periods. Claimant had the burden to prove that he had no ability to work during the qualifying periods for the first, second, and third quarters, and he was required to produce a narrative from a doctor which specifically explains how the injury causes a total inability to work. Tex. W.C.

Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)). The hearing officer's factual finding that the claimant failed to meet this burden is an independent ground upon which the hearing officer's denial of SIBs is based and is affirmable under our standard of review. Again this is true even if another fact finder might have made a different factual determination.

As far as bias is concerned, it is the duty of the party asserting bias to prove it, and we do not find anything in the record that proves bias.

The true corporate name of the insurance carrier is **TRANSCONTINENTAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**CT CORPOARTION SYSTEM  
350 NORTH ST. PAUL  
DALLAS, TEXAS 75201.**

---

Gary L. Kilgore  
Appeals Panel

CONCUR:

---

Elaine M. Chaney  
Appeals Panel

---

Robert W. Potts  
Appeals Panel